

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DOUGLAS WOOD and SANDRA KARLSVIK,
husband and wife,

Plaintiffs,

v.

KITSAP COUNTY; WEST SOUND
NARCOTICS ENFORCEMENT TEAM;
OFFICER MATTHEW DOUGIL, WestNET);
GIG HARBOR POLICE DEPARTMENT
DETECTIVE JOHN DOE SCHUSTER
(WestNET) DETECTIVE JOHN HALSTED
(POULSBO POLICE DEPT, WestNET, Badge
#606); DETECTIVE G.R. MARS (WSP
STATEWIDE INCIDENT RESPONSE TEAM,
Badge #685); DETECTIVE JOHN DOE
WILSON and JOHN DOES 1-25

Defendants.

NO. C05-5575RBL

ANSWER AND AFFIRMATIVE DEFENSES
OF GIG HARBOR POLICE DEPARTMENT,
OFFICER MATTHEW DOUGIL,
DETECTIVE JOHN DOE SCHUSTER AND
DETECTIVE JOHN HALSTED TO
PLAINTIFFS' COMPLAINT FOR
DAMAGES AND DEMAND FOR JURY

The defendants Gig Harbor Police Department, Matthew Dougil, John Doe Schuster
and John Halsted answer the plaintiffs' Complaint for Damages as follows:

1. Paragraph 1.1 states legal conclusions to which no answer is required. To the

ANSWER AND AFFIRMATIVE DEFENSES
AND DEMAND FOR JURY (C05-5575RBL) -
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1 extent an answer is required, defendants admit this court has jurisdiction, but deny that
2 jurisdiction is pursuant to 28 USC 1332.

3 2. In answering paragraph 1.2 of plaintiffs' Complaint, defendants admit that the
4 warrant service and arrest of plaintiff occurred in Fox Island, Pierce County, Washington. The
5 Gig Harbor Police Department is located in Pierce County, Washington. Office Matt Dougil
6 resides in Pierce County, Washington. Officer Schuster resides in Kitsap County, Washington.
7 Officer Halsted resides in Kitsap County, Washington. Except as so stated, defendants are
8 without knowledge or information sufficient to form a belief as to the truth of the allegations in
9 said paragraph and therefore deny the same.

10 3. In answering paragraph 2.1 of plaintiffs' Complaint, defendants are without
11 knowledge or information sufficient to form a belief as to the truth of the allegations in said
12 paragraph and therefore deny the same.

13 4. In answering paragraph 2.2 of plaintiffs' Complaint, Officer Matt Dougil is
14 employed by the Gig Harbor Police Department, Officer Dale Schuster is employed by the Port
15 Orchard Police Department, and Officer John Halsted is employed by the Poulsbo Police
16 Department. Officers Dougil, Schuster and Halsted are or were assigned to the West Sound
17 Narcotic Enforcement Team (WestNET). Except as so stated, defendants are without
18 knowledge or information sufficient to form a belief as to the truth of the allegations in said
19 paragraph and therefore deny the same.

20 5. In answering paragraph 2.3 of plaintiffs' Complaint, defendants are without
21 knowledge or information sufficient to form a belief as to the truth of the allegations and
22 therefore deny the same.

1 6. In answering paragraph 2.4 of plaintiffs' Complaint, defendants admit that
2 WestNET is a multi-jurisdictional drug task force. Defendants further assert that WestNET is not
3 an entity against which suit can be brought, and is not a proper defendant in this action.

4 7. Paragraph 2.5 of plaintiffs' Complaint contains legal assertions to which no
5 answer is required. To the extent an answer is required, defendants admit that officers Dougil,
6 Schuster and Halsted were among officers from several jurisdictions during the issuance of a
7 warrant and arrest of plaintiff Wood, and were acting within the course and scope of their
8 employment. Except as so stated, denied.

9 8. In answering paragraph 2.6 of plaintiffs' Complaint, defendants deny.

10 9. In answering paragraph 2.7 of plaintiffs' Complaint, defendants were acting
11 pursuant to the WestNET Interlocal Agreement. Except as so stated, denied.

12 10. In answering paragraph 2.8 of plaintiffs' Complaint, defendants deny the
13 allegations in said paragraph.

14 11. In answering paragraph 3.1 of plaintiffs' Complaint, defendants admit that on
15 September 5, 2002, several police officers, assisted by the Washington State Patrol Statewide
16 Incident Response Team, served upon plaintiff a valid search warrant leading to plaintiff's
17 arrest. Except as admitted, defendants deny the allegations in paragraph 3.1.

18 12. In answering paragraph 3.2 of plaintiffs' Complaint, defendants admit the
19 search of plaintiffs' home was conducted pursuant to a search warrant obtained by a member
20 of WestNET and believed to be signed by Kitsap County Superior Court Judge Russell
21 Hartman. Except as admitted, defendants deny the allegations in paragraph 3.2.

13. In answering paragraph 3.3 of plaintiffs' Complaint, defendants deny the
1 allegations in said paragraph.

2 14. In answering paragraph 3.4 of plaintiffs' Complaint, defendants deny the
3 allegations in said paragraph.

4 15. In answering paragraphs 3.5 through 3.7 of plaintiffs' Complaint, defendants
5 admit upon information and belief that SIRT members encountered three large growling dogs
6 coming up the basement stairs as the team was descending them. Pepper balls were deployed
7 on the lead dog in order to deter its aggressive approach. The dog was struck in the head area
8 and immediately fled the house with the other dogs following. Except as admitted, defendants
9 deny the allegations in paragraphs 3.5 through 3.7.

10 16. In answering paragraph 3.8 of plaintiffs' Complaint, defendants admit that
11 pursuant to a valid search warrant, illegal drugs were located on plaintiffs' property. Except as
12 admitted, defendants deny the allegations in paragraph 3.8.

13 17. In answering paragraph 3.9 of plaintiffs' Complaint, defendants are without
14 knowledge or information sufficient to form a belief as the truth of the allegations of said
15 paragraph and therefore deny the same.

16 18. In answering paragraphs 3.10 and 3.11 of plaintiffs' Complaint, defendants
17 admit plaintiff presented a note written by his wife recommending his use of marijuana. Except
18 as admitted, defendants deny the allegations of paragraphs 3.10 and 3.11.

19 19. In answering paragraph 3.12 of plaintiffs' Complaint, defendants admit plaintiff
20 was properly arrested and booked at the Pierce County Jail. Except as admitted, defendants
21 deny the allegations in paragraph 3.12.

20. Defendants deny the allegations in paragraph 3.13 of plaintiffs' Complaint.

21. Defendants deny the allegations in paragraph 3.14 of plaintiffs' Complaint.

22. In answering paragraph 4.1 of plaintiffs' Complaint, defendants reassert each and every allegation in the preceding paragraphs as if fully set forth herein.

23. In answering paragraph 4.2 of plaintiffs' Complaint, defendants deny the allegations contained in said paragraph.

24. In answering paragraph 4.3 of plaintiffs' Complaint, defendants admit that they were acting lawfully and within the course of their respective employment. Except as admitted, defendants deny the allegations of paragraph 4.3.

25. In answering paragraph 4.4 of plaintiffs' Complaint, defendants deny the allegation contained in the stated paragraph.

26. In answering paragraph 4.5 of plaintiffs' Complaint, defendants deny the allegations contained in said paragraph.

27. In answering paragraph 5.1 of plaintiffs' Complaint, defendants deny the allegations contained in said paragraph.

28. In answering paragraph 5.2 of plaintiffs' Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph and therefore deny the same.

29. In answering paragraph 5.3 of plaintiffs' Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph and therefore deny the same.

1 30. In answering paragraph 5.4 of plaintiffs' Complaint, defendants deny the
2 allegations in said paragraph.

3 31. In answering paragraph 5.5 of plaintiffs' Complaint, defendants deny the
4 allegations in said paragraph.

5 32. Defendants deny the allegations contained in the prayer for relief, subsections
6 (a) through (d).

7 FURTHER, AND BY WAY OF AFFIRMATIVE DEFENSES, defendants allege as follows:

8 **FIRST AFFIRMATIVE DEFENSE**

9 The Complaint and each purported claim therein fail to state a claim against defendant
10 upon which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 Plaintiffs have failed to state a claim for liability under 42 U.S.C. § 1983 against
13 defendants.

14 **THIRD AFFIRMATIVE DEFENSE**

15 Plaintiffs' claims are barred in whole or in part by doctrines of qualified immunity or
16 immunity.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 All or some of plaintiffs' alleged injuries, if any, may have been caused and/or
19 contributed to in whole or in part by the plaintiffs' contributory or comparative fault or
20 negligence. The contributory fault or comparative fault chargeable to the plaintiffs bars
21 plaintiffs' recovery or, in the alternative, diminishes proportionately the amount that can be
22

1 awarded as compensatory damages. Defendants are entitled to an apportionment of fault
2 under RCW 4.22.070.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 Plaintiffs' claims may be barred in whole or in part by plaintiffs' own course of conduct.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 Plaintiffs' claims are barred by the doctrine of assumption of risk. Plaintiffs' injuries and
7 damages, if any, arise out of conditions which plaintiffs had knowledge and to which plaintiffs
8 voluntarily subjected themselves through their actions.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 The defendants are entitled to a reduction in any damages that may be awarded against
11 them by virtue of, and to the full extent of, any failure by plaintiffs to mitigate damages.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 Any claims that plaintiffs may assert against these defendants under 42 U.S.C. § 1983
14 are frivolous, entitling defendants to an award of costs, including a reasonable attorney's fee,
15 under 42 U.S.C. § 1988 for having to defend against plaintiffs' claim under this statute.

16 **NINTH AFFIRMATIVE DEFENSE**

17 The damages, if any, allegedly incurred by the plaintiffs are caused by the actions or
18 omissions of plaintiffs and/or others, and were not proximately caused by defendants.
19 Defendants are entitled to an apportionment of fault under RCW 4.22.070.

20 **TENTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' claims, and/or some of them, may be barred by the applicable statutes of
22 limitations.

ELEVENTH AFFIRMATIVE DEFENSE

1 If any loss or damage was suffered by plaintiffs, which defendants deny, then the loss or
2 damage may have been caused by or contributed to by the superseding, intervening, and
3 unexpected acts and conduct of other persons and parties, all of which bar the plaintiffs' right
4 to recovery from defendants.

TWELFTH AFFIRMATIVE DEFENSE

5 Plaintiffs' claims may be barred in whole or in part by the public duty doctrine.

THIRTEENTH AFFIRMATIVE DEFENSE

6
7
8 Some or all of plaintiffs' claims in the complaint are barred against the defendants
9 because, pursuant to RCW 4.96.010 "[f]iling a claim for damages within the time allowed by
10 law shall be a condition precedent to the commencement of any action claiming damages,"
11 and the plaintiffs did not comply with RCW 4.96.010(1).

FOURTEENTH AFFIRMATIVE DEFENSE

12
13 Some or all of plaintiffs' claims in the complaint are barred against defendants because
14 plaintiffs did not comply with RCW 4.96.020, including RCW 4.96.020(2), (3) and (4).
15 Pursuant to RCW 4.96.020(4), "No action shall be commenced against any local government
16 entity for damages arising out of tortuous conduct until sixty days have elapsed after the claim
17 has first been presented to and filed with the governing body thereof." This claim statute also
18 requires such a filing to pursue claims against an employee.

19 WHEREFORE, having answered plaintiffs' Complaint and asserted affirmative
20 defenses, defendants Gig Harbor Police Department, Matt Dougil, Dale Schuster and John
21 Halsted pray for relief as follows:
22

1. That plaintiffs' Complaint against defendants be dismissed with prejudice;
2. That plaintiffs recover nothing against these defendants on their claims;
3. That defendants be awarded their costs and disbursements herein, including reasonable attorneys' fees as available under applicable statutes and principles of law; and
4. For such other and further relief as the Court deems just and equitable.

DATED this 19th day of December, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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